

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

| | | |
|-----------------------|---|----------------------------------|
| IN RE: | § | |
| | § | Case No. 14-40665-BTR-11 |
| TURBO TRAC USA, INC., | § | Chapter 11 |
| | § | Hearing Date: May 1, 2014 |
| Debtor. | § | Hearing Time: 9:30 a.m. |

**OBJECTION TO MOTION TO INCUR
SUPERPRIORITY POSTPETITION SECURED INDEBTEDNESS**

COMES NOW, Turbo T Lubbock, LLC, by and through undersigned counsel, and files this Objection to the Debtor's Motion for Interim and Final Orders Authorizing the Debtor to Incur Superpriority Postpetition Secured Indebtedness and Granting Security Interests ("Motion") and would show the following:

1. Turbo T Lubbock, LLC is a secured creditor of the Debtor. Turbo T Lubbock has for good and valuable consideration been sold and assigned the rights, title and interest as Lender in that certain loan made by American Bank of Commerce ("ABC") to Turbo Trac USA, Inc. ABC has assigned without recourse the December 31, 2013 Promissory Note in the original principal amount of \$500,000, the Security Agreement dated August 7, 2012 between the Debtor and ABC, the Guaranties of the Note and an Assignment of the Deposit Account of Scott. A true and correct copy of the Assignment of Collateral and Loan Documents is attached hereto.

2. Turbo T Lubbock is now the principal secured creditor of the Debtor. Turbo T Lubbock is secured by all business assets of the Debtor. The Motion attempts to prime or subordinate the existing first security interest Turbo T Lubbock holds by its lien on the assets of Debtor. The Debtor in Possession lender is an insider of the Debtor, Rutter.

3. Turbo T Lubbock objects to the Debtor's Motion. The Motion should not be approved by the Court. This Debtor has no employees, no current business operations and no income. The market for the Debtor's unproven product, the industrial Mechanical Variable Speed Drive ("M-VSD"), if any, is highly speculative and there appears to be little chance of successful reorganization.

4. The Motion's request is for up to \$50,000 to be secured by a senior lien on all the Debtor's assets. That lien would prime the lien Turbo T Lubbock holds in the amounts advanced. The Motion seeks an "initial advance" from Rutter, the Debtor in Possession Lender, of \$14,220.04. The Motion also initially seeks to pay one month's rent, pay general liability insurance, D&O insurance and a payment for Patent Maintenance. The Debtor is already three months behind on its rent obligations. The other proposed payments appear to benefit the insiders more than creditors. Exhibit "A" to the Debtor's Motion does not include any invoices for those items they request to pay as owing.

5. The request for additional funding seeks post-petition payment of the Debtor's attorney fees and other items that cover a term for continued operations. The Debtor in Possession loan is for "Administrative and operational costs during the pendency of the Bankruptcy." The proposed loan however only covers costs for a very short period of time with most of the monies being paid to "management and attorney fees." It is not clear what management is being paid under the proposal.

6. The Debtor proposes to obtain financing by granting the post-petition lender a priming lien in collateral securing Turbo T Lubbock prepetition claim. The Debtor's proposal should provide the prepetition secured creditor with the same level of protection that it would have had if there had been no post-petition superpriority financing. Bankruptcy Code 364 (d) (1)

(B). It is the Debtor's burden to show that same level of protection is provided. Nothing in the Motion indicated how Turbo T Lubbock is being provided with the same level of protection. The Debtor's request for leave to borrow on a superpriority basis should be denied as it requires Turbo T Lubbock to suffer further erosion of its secured position in order to underwrite the Debtor's speculative prospects of reorganizing.

7. The Debtor has not established that in its Motion that it was unable to obtain credit other than through the requested superpriority lien.

8. Turbo T Lubbock is under secured. The value if its lien on assets is significantly less than the debt owed. The Debtor has failed to show how the value of the Debtor is increased by the proposed lending. The proposal lending offers at best very speculative benefits to the creditors and only diminishes the adequate protection of Turbo T Lubbock.

9. The rate of interest for the proposed Debtor in Possession loan is excessive. Twelve percent per annum interest is not the appropriate rate when the lender is secured by a superpriority lien position. The terms of the loan's maturity are vague and uncertain. It could be years before a Chapter 11 case "distributes to creditors." Use of loan proceeds does not offer a benefit to creditors. The loan documents are not available for inspection and therefore the complete terms of the proposed post-petition lending are not disclosed.

10. Rutter, the proposed lender, is an insider however his relationship and ownership of the Debtor is not disclosed. Rutter, as lender, should consider the loan an equity investment to protect his interest in the Debtor.

11. Keeping the Debtor "alive" for an additional short period of time provides no benefit to creditors. There is no benefit or adequate protection specified for Turbo T Lubbock. The only parties to benefit are management and the Debtor's attorneys.

Whereas, the above premises considered, Turbo T Lubbock prays its Objection to the to the Debtor's Motion for Interim and Final Orders Authorizing the Debtor to Incur Superpriority Postpetition Secured Indebtedness and Granting Security Interests be sustained and for such other and further relief as to which Turbo T Lubbock may be justly entitled.

Respectfully submitted,

/s/ Richard G. Dafoe
Richard G. Dafoe
State Bar No. 05309500
Vincent Lopez Serafino & Jenevein, P.C.
1601 Elm Street, Suite 4100
Dallas, Texas 75201
214-979-7400 - Telephone
214-979-7402 - Facsimile
rdafoe@vilolaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on the 30th day of April 2014, to the counsel for the Debtor, the U.S Trustee and other who have filed notices electronically, or by U.S. first class mail.

/s/ Richard G. Dafoe
Richard G. Dafoe

ORIGINAL

ASSIGNMENT OF COLLATERAL AND LOAN DOCUMENTS

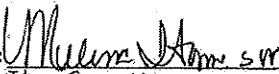
This Assignment of Collateral and Loan Documents (the "Assignment") is made by American Bank of Commerce, with its principal place of business located at 4656 North Loop 289, Lubbock, Texas 79416 ("ABC") in favor of Turbo T Lubbock LLC, a Texas limited liability company, having a mailing address of 3223 South Loop 289, Suite 124, Lubbock, Texas 79423 (the "Assignee").

In consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ABC hereby grants, bargains, sells, conveys, assigns, transfers, and sets over unto Assignee, all of its right, title and interest in and to those certain Loan and Collateral Documents identified on Schedule A annexed hereto and incorporated herein (individually and collectively, the "Collateral Documents") as each of the Loan and Collateral Documents may have been amended, together with all indebtedness secured hereby and all notes and any and all other loan documents and agreements evidencing the indebtedness secured by the Loan and Collateral Documents including, without limitation, all liens, security interest, and guarantees (individually and collectively, the "Loan Documents"). The Collateral Documents and Loan Documents shall include, without limitation, all modifications, restructurings, extensions, consolidations, replacements, renovations, and amendments thereof.

This Assignment is made without recourse and without any representations or warranties of any kind, except for any representation or warranty specifically set forth in that certain Nonrecourse Assignment Agreement between ABC and the Assignee.

IN WITNESS WHEREOF, the said ABC has duly executed this Assignment this 28th day of April, 2014.

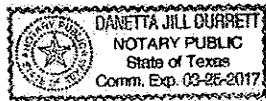
AMERICAN BANK OF COMMERCE

BY: 
Its Senior Vice President

STATE OF TEXAS \$
COUNTY OF LUBBOCK \$

BEFORE ME, the undersigned authority, on this day personally appeared American Bank of Commerce, by and through Melissa Hopson, its Sr. Vice President, known to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed same in the capacity as herein stated for the purposes and consideration therein expressed.

GIVEN UNDER MY OFFICIAL HAND AND SEAL OF OFFICE on this 28th
day of April, 2014.



Carolita Gill Carrett
Notary Public, State of Texas

SCHEDULE A
to Assignment of Collateral and Loan Documents
dated April 28, 2014

- i) Promissory Note dated December 31, 2013, in the original principal amount of \$500,000.00 executed by USA and payable to the order of ABC, together with the original note from USA payable to ABC dated August 7, 2012;
- ii) Security Agreement dated August 7, 2012, among USA, as Debtor, and ABC, as Secured Party;
- iii) Guaranty Agreements of Rough, Leake, Dykes, Swenson, Wolcott and Sharbutt; and
- iv) Assignment of Deposit Account of Scott.

UCC FINANCING STATEMENT

Document Page 8 of 9

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

CSC

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Corporation Service Company
801 Stevenson Drive
Springfield, IL 62703
USA

FILING NUMBER: 12-0025051460

FILING DATE: 08/07/2012 06:19 PM Lapse Date 08.07.2017

DOCUMENT NUMBER: 435690090001

FILED: Texas Secretary of State

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THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

| | | | | |
|---|---|--|--|-----------------------------------|
| OR | 1a. ORGANIZATION'S NAME TURBO-TRAC USA, INC | | | |
| | 1b. INDIVIDUAL'S LAST NAME | | | |
| 1c. MAILING ADDRESS 6170 Research Rd. Suite 203 | | CITY Frisco | STATE TX | POSTAL CODE 75033 |
| 1d. TAX ID# SSN OR EIN | | ADD'L DEBTOR INFO RE ORGANIZATION DEBTOR | 1e. TYPE OF ORGANIZATION Corp. | 1f. ORG JURISDICTION TX |
| | | 1g. ORG. ID #, if any 0162384900 | | |
| | | <input type="checkbox"/> NONE | | |

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

| | | | | |
|------------------------|----------------------------|--|--------------------------|----------------------|
| OR | 2a. ORGANIZATION'S NAME | | | |
| | 2b. INDIVIDUAL'S LAST NAME | | | |
| 2c. MAILING ADDRESS | | CITY | STATE | POSTAL CODE |
| 2d. TAX ID# SSN OR EIN | | ADD'L DEBTOR INFO RE ORGANIZATION DEBTOR | 2e. TYPE OF ORGANIZATION | 2f. ORG JURISDICTION |
| | | 2g. ORG. ID #, if any | | |
| | | <input type="checkbox"/> NONE | | |

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

| | | | | |
|--|---|--------------------------|--------------------|-----------------------------|
| OR | 3a. ORGANIZATION'S NAME AMERICAN BANK OF COMMERCE | | | |
| | 3b. INDIVIDUAL'S LAST NAME | | | |
| 3c. MAILING ADDRESS DRAWER 9 | | CITY WOLFFORTH | STATE TX | POSTAL CODE 79382 |
| | | COUNTRY USA | | |

4. This FINANCING STATEMENT covers the following collateral:

All Inventory, Chattel Paper, Accounts, Equipment, General Intangibles, Fixtures, Supporting Obligations, Instruments (including promissory notes), Documents, Deposit Accounts, Financial Assets, Securities and Letter-of-Credit Rights; whether any of the foregoing is owned now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and other accounts proceeds)

5. ALTERNATIVE DESIGNATION [if applicable]: ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS Attach Addendum [if applicable]

7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2 [ADDITIONAL FEE] [optional]

8. OPTIONAL FILER REFERENCE DATA

TAA1084 14-JCH [68810919]

FILING OFFICE COPY

FOLLOW INSTRUCTIONS

| |
|---|
| A. NAME & PHONE OF CONTACT AT FILER (optional) Happy State Bank & Trust Company 8063585110 |
| B. E-MAIL CONTACT AT FILER (optional) |
| C. SEND ACKNOWLEDGMENT TO: (Name and Address) Happy State Bank & Trust Company 701 S Taylor Box LB 120 Amarillo, TX 79101 USA |

FILING NUMBER: 14-00133060

FILING DATE: 04/28/2014 02:32 PM

DOCUMENT NUMBER: 541254190003

FILED: Texas Secretary of State

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| | | | |
|--|--------------------------|--|--------------------------------------|
| 1a. INITIAL FINANCING STATEMENT FILE NUMBER 12-0025051460 | | 1b. <input type="checkbox"/> This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13 | |
| 2. <input type="checkbox"/> TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of the Secured Party authorizing this Termination Statement | | | |
| 3. <input checked="" type="checkbox"/> ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b and address of Assignee in item 7c and also name of Assignor in item 9. For partial assignment, complete item 7 and 9 and also indicate affected collateral in item 8 | | | |
| 4. <input type="checkbox"/> CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law | | | |
| 5. <input type="checkbox"/> PARTY INFORMATION CHANGE: Check <u>one</u> of these two boxes. This Change affects <input type="checkbox"/> Debtor <u>or</u> <input type="checkbox"/> Secured Party of record. AND Check <u>one</u> of these three boxes to: <input type="checkbox"/> CHANGE name and/or address: Complete item 6a or 6b; and item <input type="checkbox"/> ADD name: Complete item 7a or 7b, and item 7c <input type="checkbox"/> DELETE name: Give record name to be deleted in item 6a or 6b. | | | |
| 6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only <u>one</u> name (6a or 6b) | | | |
| 6a. ORGANIZATION'S NAME | | | |
| OR | 6b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) SUFFIX |
| 7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only <u>one</u> name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) | | | |
| 7a. ORGANIZATION'S NAME | | | |
| OR | 7b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) SUFFIX |
| 7c. MAILING ADDRESS | | | |
| 3223 S LOOP 289 SUITE 124 | | CITY LUBBOCK | STATE TX |
| | | POSTAL CODE 79423 | COUNTRY USA |
| 8. <input type="checkbox"/> COLLATERAL CHANGE: Also check <u>one</u> of these four boxes: <input type="checkbox"/> ADD collateral <input type="checkbox"/> DELETE collateral <input type="checkbox"/> RESTATE covered collateral <input type="checkbox"/> ASSIGN collateral Indicate collateral: | | | |
| 9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT: Provide only <u>one</u> name (9a or 9b) (name of Assignor, if this is an Assignment) If this is an Amendment authorized by a DEBTOR, check here <input type="checkbox"/> and provide name of authorizing Debtor | | | |
| 9a. ORGANIZATION'S NAME | | | |
| OR | 9b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) SUFFIX |
| AMERICAN BANK OF COMMERCE | | | |
| 10. OPTIONAL FILER REFERENCE DATA: | | | |

FILING OFFICE COPY